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I

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PREFACE

This bibliography of materials in English on the laws of the People's Republic of China covers the period from the middle of 1985 through the middle of 1989. It is intended as a continuation of the 1985 Law Library publication compiled by Jeanette L. Pinard entitled, *The People's Republic of China: A Bibliography of Selected English-Language Legal Materials*, which has been reprinted in volume 3 of the *China Law Reporter* (1985, p. 46-143).

For the most part, the materials included are journal articles and monographs, not newspaper items, though some translated news reports reprinted by the Joint Publications Research Service have been listed. The Foreign Broadcast Information Service's *Daily Report: China* is indexed by NewsBank Inc. and therefore not included here.

In addition to the Library of Congress's computerized catalog system, the compiler has used *Index to Legal Periodicals, Index to Foreign Legal Periodicals, Current Law Index, Humanities Index, Social Sciences Index, Public Affairs Information Service,* and *Legaltrac*.

Each listing includes a call number. Those that begin with the word LAW, the letter K, or JX, except JX1304-1999, are in the Law Library's collection. LLFE refers to the reference collection of the Far Eastern Law Division. Other materials may be obtained either through the Library of Congress Main Reading Room or its Newspaper and Current Periodical Reading Room.

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INTRODUCTION

In the years since 1978, under the leadership of Deng Xiaoping, the People's Republic of China has followed a policy of augmenting the legal system. With the growth in academic and commercial contacts between China and the West in the same years, interest in Chinese law has developed. Understanding the Chinese legal system is made complicated, however, by a number of fundamental problems, such as the relationship between law and party policy, the existence in some periods of a quantity of unpublished regulations, and the adoption of laws on a "provisional basis." The legal terms used and the hierarchy of types of laws also present difficulties; the Chinese themselves are not consistent in their use of terminology. The lack of standardization in translation of legal terms and titles can add to the confusion for outsiders trying to comprehend the system.

I. Legislative Authority

Although China is a country composed of many ethnic groups, some of whom have a degree of autonomy to develop their own laws, the PRC is a unitary, not a federated state. Major legislation comes from the central organs; local legislation is permitted because of China's size and diversity, but it is limited in scope. According to articles 62 and 69 of the Constitution, the supreme power organs of the state with the authority to enact legislation are the National People's Congress (NPC) and its Standing Committee. [1] The NPC has the right and obligation to make and revise constitutions and "basic laws" [*jiben falü* 基本法律]. The term "basic law" has not been officially defined, but it includes such things as the major codes. The Standing

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[1] Constitution of 1982. Widely available in English translation; *see: The Constitution of the People's Republic of China* (Beijing, 1983).

Committee may enact laws other than basic laws and may revise basic laws when the NPC is not in session. Any such revisions should be in accordance with the spirit of the basic law as originally enacted by the NPC. [2] The NPC enacts both laws [*falü*:法律] and resolutions [*jueyi*:决议]. The administration organs of the government, up to and including the State Council, may adopt administrative regulations [*fagui*:法规] and local governments can adopt local regulations [*difangxing fagui*:地方性法规].

II. National People's Congress

Under the first Constitution of the People's Republic, that of 1954, there was only one organ with legislative power, the National People's Congress. This arrangement quickly proved to be unworkable, and in 1955, the Second Session of the first NPC authorized the Standing Committee to enact individual laws. The scope of legislative activity of the Standing Committee was expanded in 1959, when the NPC authorized that Committee to revise laws when the full body was not in session. The current Constitution specifically authorizes the Standing Committee to enact laws, in part because the pace of modernization has been such that the legislative process needed to operate more swiftly than it had previously. The NPC as a whole not only meets infrequently, it is unwieldy in size, with nearly 3500 members. It is thus necessary that the 200-person Standing Committee take on legislative functions. [3]

The NPC itself produces such basic laws as the Constitution and major legal codes. There are several ways for a bill [*faan* 法案] to be introduced. The NPC's Presidium, a body consisting of about 200 members elected by the NPC delegates, may submit a bill. The

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[2] *See discussion in*: *Faxüe jichu lilun* [Theses on the Bases of Law] 340-341 (Beijing, 1984).

[3] *See* Sun Bingzhu, "The Legislative Power of the Standing Committee of the NPC," *Xianfa lunwen ji: xubian* [Collected Essays on the Constitution: Second Part] 257-259 (Beijing, 1982); Liu Shengyang, "An Understanding of Our Country's Legislative System," at 263-269.

Standing Committee and other NPC Committees also have this right.[4] The committees, under the direction of the NPC or the Standing Committee, examine, discuss, and draw up bills and resolutions. When the NPC is in session, any group of 30 or more deputies or any delegation from an electoral unit may introduce a bill. According to Zhang Xin, who formerly taught in the Law Department at Beijing University, bills introduced by such groups are added to the agenda only at the discretion of the Presidium.[5] The State Council may submit a draft bill, as may the Supreme People's Court, the Supreme People's Procuracy, and the Central Military Commission; their bills must eventually appear on the agenda. Once submitted, any bill may be sent by the Presidium to a committee for consideration or may be sent directly to the various delegations, before the full session votes on it.[6]

When bills go through the Standing Committee, the actual work of examining texts is done by the Legal Work Commission [*fazhi gongzuo weiyuanhui* 法制工作委员会].[7] This Commission consists of some Standing Committee members, as well as legal scholars from outside the Committee; it will research the subject, review the proposed bill, and suggest any needed changes. In contrast, the Law Committee of the NPC itself consists only of delegates.

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[4] Article 70 of the Constitution specifies that the NPC Committees will include committees on: Nationalities; Law; Finance and Economy; Education, Science, Culture and Public Health; Foreign Affairs; and Overseas Chinese.

[5] "How New Laws Come Into Effect," *South China Morning Post* (Hong Kong), Mar. 14, 1986, at 2.

[6] Arts. 9-10, Organic Law of the NPC, adopted Dec. 10, 1982; *available in English translation in*: 1 *The Laws of the People's Republic of China (1979-1982)* 334-342 (Beijing, 1987).

[7] The Chinese term literally is Legal System Work Committee. The term "work" was added to help distinguish this committee from the Law Committee of the full NPC. Here we have used the translation given in the Central Intelligence Agency, *Directory of Chinese Officials: National Level Organizations* 27-28 (June 1985).

While the Law Committee makes policy, the Legal Work Commission does the actual groundwork of research for new legislation.[8] At times, however, the two bodies work together to examine a proposed law.[9]

For the most part, laws enacted by the NPC have been titled *fa* [法 law], as in "*Hunyin fa*" [婚姻法Marriage Law]. The Standing Committee of the NPC also enacted documents titled *fa*, as well as *tiaoli* [条例 regulations]. There is generally little or no difference in format or status for documents issued by the Standing Committee between those called *fa* and those called *tiaoli*.[10]

The NPC or the Standing Committee may also issue documents in another category, resolutions [*jueyi* 决议]. Some of these contain legal norms and thus may be considered a part of the lawmaking process. They include amendments or supplements to laws, which become integral parts of the existing laws, as well as the orders promulgating basic laws, which include the date of adoption and sometimes the effective date. Other resolutions, those not considered a part of the body of law created by the NPC, include such documents as notifications about the organization of a conference or lists of appointments.

III. State Council

The State Council establishes administrative regulations [*xingzheng fagui*]. The titles used for these enactments include *tiaoli* [regulations], *banfa* [办法 measures], *guize* [规则 rules], *guiding* [规定 provisions], and *shixing xize* [施行细则 detailed rules for implementation]. Detailed rules for implementation, such as the Detailed Rules for the Implementation of the Individual Income Tax Law of the PRC, are issued together with or after the promulgation of the more general law. In structure, all of these documents are similar to the laws enacted by the NPC or its Standing Committee, and there can be confusion because the Standing Committee also issues regulations [*tiaoli*].[10] In addition, the administrative organs of the state generate a great number of other documents. The titles for these are governed by the Provisional Measures on Handling Official Documents of the State Administrative Organs.[11] In February 1990, with the goal of strengthening the structure under which regulations are enacted, the State Council issued "Provisions for Putting Rules and Regulations on Record."[12]

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[8] Analysis by an associate researcher at the Institute of Law of the Chinese Academy of Social Sciences, Xie Huaishi, "China's Legislative Work," 1985 *Guangjiao jing* [Wide Angle] 91-93 (Oct. 16, 1985).

[9] Information on legislative procedure of the Standing Committee in the Work Report of the Standing Committee of the NPC, presented by Chen Pixian, Vice-Chairman of the Standing Committee, May 26, 1984, *text in*: *Zhongguo nianjian 1985* [China Yearbook 1985] 89-91 (Beijing, 1985); *summary in English translation in*: Foreign Broadcast Information Service, *Daily Report: China*, May 29, 1984, at K6-K9.

Administrative regulations may be prepared by one of the ministries subordinate to the State Council and then submitted for examination. While the State Council frequently enacts the regulations on its own, in some cases the approval of the NPC or its Standing Committee has been given. For example, when the 1957 Decision on Rehabilitation Through Labor was supplemented in 1979, the Standing Committee approved the supplement.[13]

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[10] Liu Han, a prominent Chinese jurist, suggested in 1983, that the Standing Committee use only *fa*, so that *tiaoli* could be reserved for administrative regulations. "Normalization of the Legal System and the Names of Laws and Regulations," 1983:6 *Faxue* [Jurisprudence] 5-12, 5 (June 10, 1983).

[11] Adopted by the State Council on Feb. 27, 1981; 1981:5 *Zhonghua renmin gongheguo guowuyüan gongbao* [Gazette of the State Council of the PRC] 152-158 (May 15, 1981); *summary in English in: China Official Annual Report 1982/3* 276-277 (Hong Kong, 1982); discussed in Hsia & Johnson, *Law Making in the People's Republic of China: Terms, Procedures, Hierarchy, and Interpretations* 9-10 (Washington, D.C., 1986).

[12] Feb. 18, 1990. Reported by Xinhua Domestic Service, Feb. 27, 1990, Foreign Broadcast Information Service, *Daily Report: China*, Mar. 9, 1990, at 23.

China has no general, legal definition of the types of subjects to be regulated by the State Council and its subordinate organs, rather than reserved for treatment by the NPC or its Standing Committee. One discussion of the subject from a law treatise suggests that administrative regulations are appropriate as organic statutes for state bureaus, designing their nature, tasks and powers; as personnel regulations, covering hiring, firing, promotion, training, transfer, and retirement of government officials; as administrative procedures; as management rules within agencies; and as procedures for handling disputes between such agencies and individuals.[14]

IV. Local Governments

Locally enacted regulations [*difangxing fagui*] fall into three categories. The first is those regulations needed to implement the laws of the central government that must fit local conditions. The Electoral Law for the NPC, for instance, specifies in article 44 that provincial people's congresses and their equivalents in directly-administered cities and in the autonomous regions "may formulate detailed rules on elections for implementation in accordance with this law."[15] A second category of locally enacted regulations is regulations of a supplementary nature. Provincial regulations on family planning are an example, as the national Marriage Law calls for family planning in a general way, but has no detailed provisions on the subject. The third type of local regulations deals with strictly local issues. Heilongjiang Province's regulation on the control of seeds for local crops, for example, addresses an issue not covered in any national legislation. All local laws must in theory be consistent with relevant provisions of national law and policy. [16] The Legal Work Commission of the Standing Committee of the NPC reviews such locally enacted regulations for constitutionality; the State Council checks those regulations to make sure they are not in conflict with any administrative regulations. [17]

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[13] Guo Zizhao, "Enactment of Laws," *Zhongguo da baike quanshu: faxue* [China Encyclopedia: Jurisprudence] 88-89 (Beijing, 1984).

[14] Li Buyin, *Fazhi, minzhu, ziyou* [Legal System, Democracy, and Freedom] 31 (Chengdu, 1985).

[15] Adopted July 1, 1979. Chinese text in *Zhonghua renmin gongheguo falü huibian 1979-1984* [Collection of Laws of the People's Republic of China, 1979-1984] 70-80 (Beijing, 1985).

The researcher interested in Chinese law thus faces an array of different types of enactments, produced by different bodies. The compiler of this bibliography hopes that it will be a useful guide to some of the secondary literature that may assist in the process of comprehending the legal system of the PRC.

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[16] Cui Liwen, "Categories of Local Legislation," 1985:3 *Zhengzhi yu falü* [Politics and Law] 31-333 (June 5, 1985).

[17] *Supra* note 8.

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